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In The

Supreme Court of the United States

JAMES OBERGEFELL, et al.,

Petitioners,

v.

RICHARD HODGES, DIRECTOR, OHIO DEPARTMENT OF HEALTH, et al.,

Respondents.

On Writs Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF OF AMICUS CURIAE MARRIAGE EQUALITY USA IN SUPPORT OF PETITIONERS

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CASES

Ex Parte State of Alabama ex rel. Alabama Policy Institute, et al., No. 1140460 (Ala. Mar. 3, 2015) (per curiam).....33

Perry v. Schwarzenegger, 790 F.Supp.2d 1119 (2011) (Order Denying Defendant-Intervenors' Motion to Vacate Judgment), aff'd, 671 F.3d 1052 (9th Cir. 2012), vacated and remanded for lack of standing, 133 S.Ct. 2652 (2013).....39

United States v. Windsor, 133 S. Ct. 2675 (2013).....2, 18, 36

CONSTITUTIONS, STATUTES, AND EXECUTIVE ORDERS

U.S. Const., Amend. XIV 1, 3, 32, 38, 42

Ark. Code § 14-1-403 36

Kansas Executive Order No. 15-01 (Feb. 10, 2015).....35

10 U.S.C. § 502(a).....8

OTHER AUTHORITIES

An Alabama LGBT Family Can Finally Live Together as a Family, MEUSA News Blog, Marriage Equality USA (March 2, 2015)..... 16, 17, 18, 19, 33

An LGBT Couple, Legally Married for 41 Years, Explains Why Marriage Equality Is Important to Them, MEUSA News Blog, Marriage Equality USA (March 5, 2015).....30, 31

TABLE OF AUTHORITIES – Continued

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Anna Wolfe, *A Legal Marriage Under Attack*, Jackson Free Press (Oct. 8, 2014) 40, 41

Brad Cooper, *Constitutional challenge brought against Kansas gay marriage ban*, Kansas City Star (Oct. 11, 2014) 23

Bruce Harrison, *VIDEO: Same-sex Couple Married in Topeka Church Ceremony*, WIBW News Now (Nov. 17, 2014) 23

Bryan Fischer, *The continuing saga of the lesbians who got 'married' in Mississippi*, One News Now (Oct. 6, 2014) 41

Bryan Llenas, *Behind Every Marriage Certificate – A Love Story: Slide 6: Finally . . . After 36 Years*, Fox News Latino (July 24, 2011) 38

Bryan Lowry, *Gov. Sam Brownback rescinds protected-class status for LGBT state workers in Kansas*, Kansas City Star (Feb. 11, 2015) 37

Chris Cioffi, *Gay couples get marriage licenses: "We couldn't sleep last night, we were so excited,"* Billings Gazette (Nov. 20, 2014) 20

Conor Skelding, *Meet Brig. Gen. Tammy Smith, the first openly gay U.S. general*, Yahoo! News (Aug. 13, 2012) 9

Dave Bangert, *Same-sex moms demand names on son's birth record*, Lafayette Journal & Courier (Feb. 13, 2013) 34

TABLE OF AUTHORITIES – Continued

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Declaration of Stuart M. Gaffney (Aug. 30, 2004) in *In re Marriage Cases*, 43 Cal.4th 757 (2008) 13

Equality Kansas, Twitter (Feb. 11, 2015) 35

GA Voice Editors, *Interview: Shattering the military's gay glass ceiling*, GA Voice (Aug. 12, 2012) 9

Glenn Hartong and Carrie Cochran, Article and Video: *John Arthur, Terminally Ill Ohio Man Who Challenged Gay Marriage Ban, Dies*, Cincinnati.com (Oct. 22, 2013) 25

Heidi Heilbrunn, Video: *Greenville begins issuing marriage licenses to same-sex couples*, Greenville Online (Nov. 21, 2014) 14

Jeff White, *Legally Married Mississippi Couple Faces AFA Backlash*, Daily Kos (Sep. 26, 2014) 42

Jennifer Hauser, *Elderly lesbians finally "come out," marry*, HLNtv.com (Sept. 17, 2014) 5, 7, 8

Jessica Fulgham, *I Did Not Commit Biological Fraud*, Daily Kos (Oct. 15, 2014) 40, 42

Jessie Halladay, *Couple challenges Kentucky law against gay marriage*, USA Today (July 26, 2013) 24

John Woodrow Cox, Jenna Portnoy and Justin Jouvenal, *Same-sex couples begin to marry in Virginia*, Washington Post (Oct. 6, 2014) 22

TABLE OF AUTHORITIES – Continued

Page

Jonathan Shorman and Ellen Fike, *Woman becomes first person to apply for same-sex marriage license in Shawnee County*, Topeka Capital-Journal (Nov. 13, 2014) 22, 23

Kim Passoth, *Same-sex couples can now marry in Oklahoma*, KOCO.com Oklahoma City (Oct. 6, 2014) 4

LGBT Kansans and Allies Stand Up Amidst Uncertainty and Fear, MEUSA News Blog, Marriage Equality USA (March 5, 2015) 36

Linked In, *Tammy Smith, Deputy Chief of Staff at US Army* (last visited March 5, 2015) 12

Lisa Monahan, *LGBT Couples In Oklahoma Overcome With Emotion*, News9.com (Oct. 6, 2014) 9

Markus Schmidt, *Same-sex couples marry as the unions become legal in Va.*, Richmond Times-Dispatch (Oct. 6, 2014) 20

Mary Willie, Video: *Iowa women in love for 72 years finally wed*, Des Moines Register (Sept. 16, 2014) 6, 8

Michael K. Lavers, *'What a great day to be a Virginian,'* Washington Blade (Oct. 6, 2014).....20

Mike Kilen, *Iowa women in love for 72 years finally wed*, Des Moines Register (Sept. 16, 2014) 5, 6, 7, 8

TABLE OF AUTHORITIES – Continued

Page

New Jersey Civil Union Review Commission, *The Legal, Medical, Economic & Social Consequences of New Jersey's Civil Union Law* (Dec. 10, 2008) 21

Nicole Pasulka, *Meet the Inspiring Gay Couple Who Just Got Married In Idaho*, Yahoo! News (Oct. 15, 2014) 38

One Couple's Story of Why We Need Marriage Equality in Nebraska and Nationwide, MEUSA News Blog, Marriage Equality USA (March 4, 2015) 14, 15, 27, 28, 29

Out.com Editors, *Walking the Line: Brig. Gen. Tammy S. Smith & Tracey Hepner*, Out (Jan. 31, 2013) 10, 11

Rene Stutzman, Mark Schlueb and Melanie Dostis, *'We feel ecstatic, excited,' Woman Declares As Gay Marriage Becomes Florida Reality*, Orlando Sentinel (Jan. 6, 2015) 12, 32, 38

Sean Whaley and James Dehaven, *Legal hurdles cleared, Nevada sees first same-sex marriage*, Las Vegas Review-Journal (Oct. 9, 2014) 13

Tracey Hepner, *The State of Our Gay Military Unions*, Military Partners and Families Blog (Jan. 20, 2015) 11

INTEREST OF AMICUS CURIAE[1]

Marriage Equality USA is a national, not-for-profit, volunteer-based organization, comprised of over 40,000 same-sex couples, lesbian, gay, bisexual, and transgender ("LGBT") people, their families, friends, supporters, and allies. The organization leads nonpartisan, community-based educational efforts to secure the freedom to marry for all loving, committed couples without regard to sexual orientation or gender identity and to have those marriages recognized nationwide.

SUMMARY OF ARGUMENT

This brief presents the personal voices of lesbian, gay, bisexual, and transgender Americans as they express in their own words why the Fourteenth Amendment's guarantees of liberty and equality should apply to them and include marriage equality in every state in the Union.

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[1] All respondents provided blanket consents to the filing of amicus briefs, and these consents are on file with the Clerk. All counsel of record for petitioners consented to the filing of this brief, and their letter of consent has been filed with the Clerk. Pursuant to Rule 37.6, *Amicus Curiae* affirms that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution toward preparation or submission of this brief. No person other than *Amicus Curiae*, its members, or its counsel made a monetary contribution to the brief's preparation or submission.

Millions of LGBT Americans share the same hopes and dreams as other Americans, including finding a special person to marry, building a family and life together, and growing old with each other. When they find that person, they want to have the same freedom to be able to stand before their friends and family members and commit themselves to one another for better or for worse, in sickness and in health, and to love, honor, and cherish each other always. Like other loving and committed couples, LGBT couples seek the opportunity to fulfill their dreams and make a lifetime commitment in marriage. And they want their marriages to have the same legal validity and official recognition that everyone else's marriages have.

Being able to marry and have one's marriage respected in every state of the Union is core to ensuring the rights and the dignity of LGBT Americans and their inclusion in the national community. For many LGBT Americans, getting legally married enables them to experience for the first time being treated as equal human beings under the law and having their government recognize that there is nothing inferior about the way they love. Marriage equality reduces feelings of alienation and exclusion, and helps LGBT Americans "live with pride in themselves . . . and in a status of equality" with all other Americans. *United States v. Windsor,* 133 S. Ct. 2675, 2689 (2013).

However, the current patchwork of state marriage laws means that some Americans can be married

while others cannot. Further, LGBT couples married in their home state could lose recognition of their marriage and vital rights and protections if they need to relocate to another state for a new job, to live near other family members, or to retire. Even visiting family for the holidays or simply taking a vacation out of state can leave same-sex couples and their families unprotected.

We are not just citizens of the state in which we live; we are Americans. The personal stories presented in this brief demonstrate that this Court should hold that the Fourteenth Amendment to the Constitution ensures that lesbian, gay, bisexual, and transgender Americans, like all other Americans, have the freedom to marry and the right to live free from their government treating them as less than equal because of who they are or whom they love.

ARGUMENT

I. Marriage Equality Is Essential to the Dignity and Well-Being of Lesbian, Gay, Bisexual and Transgender Americans

When Jennifer Hassler and Karina Tittjung of Broken Arrow, Oklahoma, obtained their marriage license from the Oklahoma County Clerk on October 6, 2014, after eight years together, Jennifer said: "We are all human beings. We should all take care of each other and love each other. This license . . . makes me

feel like I'm a human being recognized in these great United States."[2]

Marriage equality affects the rights, dignity and well-being of LGBT Americans from all walks of life.

A. Elder same-sex couples who have lived through America's history of discrimination against LGBT people

The court of appeals acknowledged that it "cannot deny the lamentable reality that gay individuals have experienced prejudice in this country, sometimes at the hands of public officials, sometimes at the hands of fellow citizens. . . ." Tanco, Pet. App. 55a. The experiences of elder same-sex couples who have lived through much of the worst of that discrimination attest to the importance of marriage to the well-being of LGBT Americans.

Case in Point: Vivian Boyack and Nonie Dubes, Davenport, Iowa

Vivian Boyack and Nonie Dubes, now in their 90s and living in a retirement community in Davenport, Iowa, met and fell in love in 1942 in rural Yale, Iowa, and have been together for 72 years. "I could tell you exactly what she had on," Nonie recounted. "A gray

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[2] Kim Passoth, *Same-sex couples can now marry in Oklahoma*, KOCO.com Oklahoma City (Oct. 6, 2014), http://www.koco.com/news/samesex-couples-can-now-marry-in-oklahoma/28981560.

dress with black velvet trim and big pearl buttons." Back then, Vivian and Nonie did not even understand the nature of their feelings for each other. Nonie recalls that neither of them "knew what was happening . . . We didn't even know it was anything special. I was just drawn to her. That's all." "The hand of God was there," added Vivian, "Suddenly, we were in love."[3]

Vivian and Nonie kept their love secret for over seventy years – until they decided to marry. The couple began sharing an apartment and building a life together shortly after they met. Telling others about their relationship was out of the question. Vivian was a teacher, and "I'm sure back then she would have been fired," said Nonie.[4] "We pretended that we were . . . just plain straight people, and never let on that we cared for each other, because we knew the feeling out there."[5] Vivian further explained that living together as a same-sex couple "used to be a mortal sin," and that "we knew that people wouldn't

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[3] Mike Kilen, *Iowa women in love for 72 years finally wed*, Des Moines Register (Sept. 16, 2014), http://www.desmoinesregister.com/story/life/2014/09/16/iowa-lesbians-gay-wedding-years-secret-relationship-davenport/15703647/.

[4] *Id.*

[5] Jennifer Hauser, *Elderly lesbians finally "come out," marry*, HLNtv.com (Sept. 17, 2014), http://www.hlntv.com/video/2014/09/17/elderly-lesbians-finally-come-out-marry.

approve of us, so we just kept very quiet and were very careful about what we did and what we said."[6]

Recently, a lifelong friend, Jerry, who thought they were a lesbian couple, visited them: "My journey in accepting same-sex relationships was formed by these two women, so I thought I should thank them," he said. When he did, Vivian and Nonie revealed to him that it was the first time they had ever talked to anyone about their relationship. "I was dumbstruck," he said. "I kind of blanked out, until I said, 'My gosh, this is Iowa! You should get married.'"[7] Vivian responded: "Oh no . . . we don't want to be that public, you know." "We were really scared about it," added Nonie.[8]

Then a caregiver at the retirement community asked them if they were a couple. And Vivian recounts: "So we told her we had been together for 70 years. . . . And she about went through the ceiling. . . . She was so excited that she ran [downstairs and told] the other caregivers. . . ."[9]

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[6] Kilen, *supra*; Hauser, *supra*.

[7] *Id.*

[8] Mary Willie, Video: *Iowa women in love for 72 years finally wed*, Des Moines Register (Sept. 16, 2014), http://www.desmoinesregister.com/story/life/2014/09/16/iowa-lesbians-gay-wedding-years-secret-relationship-davenport/15703647/.

[9] Hauser, *supra*.

Vivian and Nonie decided to marry. Vivian confided, "I always wanted a wedding" as she shopped for a dress at a local shop.[10]

Vivian and Nonie married in the First Christian Church of Davenport, where they had been members for 57 years and had sung in the choir and served as deacons. Nonie thought she would be "shaking in my boots" as they sat in their wheelchairs before those gathered. But she wasn't. "I faced the people in the audience. I just found it so wonderful. I'd never felt so good before, in front of that many people," she said. "So many wonderful people in our lives were there, people that knew about us but loved us still," Vivian said. "God brought us to this point."[11]

They exchanged wedding rings and vows as "loving partner" and "loving spouse."[12]

Vivian explains that now that they are married "we've learned more about ourselves and how we are. . . . After the wedding I think we probably love each other more than we ever have."[13] They no longer fear what other people can do to them and how people could hold the law against them. Nonie said: "[W]e don't have to worry about anyone saying anything to us or about us, so I think we will be happy now to live

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[10] Kilen, *supra*.

[11] *Id.*

[12] *Id.*

[13] Hauser, *supra*.

in our lives. Well, I guess it took this long to get married, because we felt that everyone was against us."[14] Now, "we know it's legal and nobody can do anything about it," explains Vivian.[15]

After they had married, their friend Jerry observed that he "began to hear them addressing each other as 'sweetie' or 'dear' which they had never done before in public. . . . They had learned to live with their heads down so long. And now they don't have to live with their heads down."[16]

B. Military and Veteran couples

All Americans who join the military swear or affirm an oath that they will "support and defend the Constitution of the United States against all enemies, foreign and domestic. . . ." 10 U.S.C. § 502(a). Every LGBT American who has taken that oath to date has done so without assurance that the Constitution they may risk their lives to defend protects their freedom to marry nationwide and to live free from other forms of governmental discrimination. Jennifer Hassler, who married Katrina Tittjung on the first day possible in Oklahoma, is a proud veteran and explained that "[a]fter fighting for this country, and everything that I believe in that's great about this country . . . it

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[14] *Id.*

[15] Willie, *supra.*

[16] Kilen, *supra.*

was . . . heartbreaking to not be allowed to marry the person that I love."[17]

Having full equality under the Constitution is vital to the rights and dignity of LGBT people this nation has entrusted to defend the country in times of war.

Case in Point: Brigadier General Tammy Smith & Tracey Hepner, Ft. Belvoir, Virginia

Brigadier General Tammy Smith and her wife Tracey Hepner met and fell in love ten years ago and married in 2012 at the Jefferson Memorial in Washington, D.C.[18] General Smith credits Tracey's support as what "keeps [her] Army Strong." When General Smith became the first openly lesbian or gay general in the American military, Tracy was by her side, pinning the star on her shoulder, a memory Tammy says "will imprint my heart forever."[19]

However, Tammy and Tracey suffered greatly from federal and state laws that prohibited them

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[17] Lisa Monahan, *LGBT Couples In Oklahoma Overcome With Emotion*, News9.com (Oct. 6, 2014), http://www.news9.com/story/26719002/lgbt-couples-in-oklahoma-overcome-with-emotion.

[18] GA Voice Editors, *Interview: Shattering the military's gay glass ceiling*, GA Voice (Aug. 12, 2012), http://thegavoice.com/interview-shattering-the-militarys-gay-glass-ceiling-2/.

[19] Conor Skelding, *Meet Brig. Gen. Tammy Smith, the first openly gay U.S. general*, Yahoo! News (Aug. 13, 2012), http://news.yahoo.com/blogs/the-lookout/meet-brig-gen-tammy-smith-us-first-openly-211521611.html.

from marrying and being able to live their lives as who they are. As Tracey recounts, for years "[w]e considered ourselves perpetually engaged because an attempt to marry would've resulted in an automatic discharge for Tammy" under "Don't Ask, Don't Tell," the law that prohibited lesbian and gay military personnel from serving openly. Tracey recalls, "I had to be in the closet at work, too, because being out would shine a light on Tammy."[20]

Soon after the repeal of "Don't Ask, Don't Tell," Tammy came out, she and Tracey married, and things changed dramatically. Tammy remembers how on the day "Don't Ask, Don't Tell" was repealed, "I was stationed in Afghanistan and woke up that morning and knew the day was going to be different. . . . At the end of that day, I took a flag and flew it to mark a special time in my life. That flag was at our wedding."[21] Tammy's quarter century of hiding who she was in the military took its toll and contributed to her internalizing negative feelings about her sexual orientation – even as she rose to the highest ranks of the American military. In Tammy's words, going "from being 100% in the closet to being globally gay" was transformative. "Tracey has taught me how to love and brought into my life a complete awakening.

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[20] Out.com Editors, *Walking the Line: Brig. Gen. Tammy S. Smith & Tracey Hepner*, Out (Jan. 31, 2013), http://www.out.com/out-exclusives/love-issue/2013/01/31/walking-line-brig-gen-tammy-s-smith-tracey-hepner.

[21] *Id.*

What she continually reminds me is to be proud of who I am. She has been so wonderful in helping me cut loose the shackles of those 26 years in the military, of having to hide a part of myself. I don't live a double life anymore."[22]

However, until this Court held Section 3 of the Federal Defense of Marriage Act unconstitutional, that law still prevented Tammy and Tracey from being treated equally as a married couple. Shortly after this Court's decision, Tracey went to the personnel office at Fort Bragg, North Carolina, and received her military family member identification card. At that moment, she felt that she and Tammy were "declared 'equal' to all married military couples. I was no longer a second-class citizen. This simple act that straight couples take for granted was a moment of celebration for my wife and me."[23] Tammy and Tracey could then finally live in married military housing together, and Tracey emphasizes "how liberating it is" for them to be able "to be our authentic selves. We're married, and wherever we go in a military setting, Tammy introduces me as her wife." No one "question[s] . . . our level of commitment to one another."[24]

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[22] *Id.*

[23] Tracey Hepner, *The State of Our Gay Military Unions*, Military Partners and Families Blog (Jan. 20, 2015), http://www.milpfc.org/2015/01/gay-military-unions/.

[24] Out.com Editors, *supra*.

Yet Tammy and Tracey live at Ft. Belvoir, Virginia, where Tammy is stationed,[25] and Virginia continued to treat them as legal strangers until October 6, 2014, when marriage equality came to the state. And today, Tracey and Tammy would lose state recognition and protection for their marriage if the military restationed Tammy to a state without equality.

C. Myriad other loving, committed LGBT couples across the country

When Jim Browne and Ken Wright of Davenport, Florida, married after 41 years together, Jim exclaimed: "We never dreamed it would happen, never believed it." Ken added, "You would never say the word gay when we were growing up – you had to whisper it. So it's come a long way."[26] Similarly, the day Diane Hawley and Carol Przybycien picked up their marriage license in Clark County, Nevada, Diane said: "We never really expected this in our lifetime," but "[a]s every state gets added into the mix, my conviction gets stronger . . . that it's here to

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[25] Linked In, *Tammy Smith, Deputy Chief of Staff at US Army*, https://www.linkedin.com/pub/tammy-smith/4/797/887 (last visited March 5, 2015).

[26] Rene Stutzman, Mark Schlueb and Melanie Dostis, *'We feel ecstatic, excited,' Woman Declares As Gay Marriage Becomes Florida Reality*, Orlando Sentinel (Jan. 6, 2015), http://www.orlandosentinel.com/news/breaking-news/os-gay-marriage-florida-wedding-day-20150106-story.html#page=1.

stay."[27] Vast numbers of LGBT Americans have long felt deeply excluded from the American experience and community as their government and society disparaged them. Being able to marry has played a pivotal role in the ongoing process of alleviating those experiences and given thousands of LGBT Americans a sense of dignity, joy, hope, and acceptance that they thought they would never have. Stuart Gaffney described the profound sense of dignity that he and his husband felt as they married:

> When . . . [we] heard the words "by virtue of the authority vested in me by the State of California, I now pronounce you spouses for life," we each felt something transform within us. We experienced for the first time our government treating us as fully equal human beings and recognizing us as a loving couple worthy of the full respect of the law.[28]

Leigh Hessel and Candace Krueger married in San Francisco in 2004 in one of the thousands of marriages that were later invalidated. Leigh recounts:

> We waited in line for eight hours . . . to get married. Our community surrounded us. . . .

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[27] Sean Whaley and James Dehaven, *Legal hurdles cleared, Nevada sees first same-sex marriage*, Las Vegas Review-Journal (Oct. 9, 2014), http://www.reviewjournal.com/news/nevada/legal-hurdles-cleared-nevada-sees-first-same-sex-marriage.

[28] *Declaration of Stuart M. Gaffney* (Aug. 30, 2004) in *In re Marriage Cases*, 43 Cal.4th 757 (2008) at 5, http://ncflr.convio.net/site/DocServer/StuartGaffney_declaration.pdf?docID=1826.

> We felt enormous support and camaraderie, but when our wedding ceremony began, it was just the two of us together in what felt like a safe and secure bubble. We held each other's hands. We looked into each other's eyes. As we took our marriage vows and exchanged our rings, we realized that we had never thought these words would ever apply to us as lesbians. Finally, they did. . . . We and our community had finally arrived.[29]

II. Marriage Equality Allows LGBT Families to Communicate That They Are a Family

"The Constitution says we have life, liberty, and the pursuit of happiness. We weren't allowed to pursue happiness until today." So remarked David Tarpley, as he and his partner of 33 years, Sonny Southerlin, received their marriage license in Greenville, South Carolina. Sonny explained: "We're just thrilled we can get married. From . . . [now] on, we'll have something that shows that we are a family."[30]

Similarly, getting married "transformed" the relationship that Candace Krueger and her wife Leigh

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[29] *One Couple's Story of Why We Need Marriage Equality in Nebraska and Nationwide,* MEUSA News Blog, Marriage Equality USA (March 4, 2015) http://www.marriageequality.org/marriage_equality_in_nebraska_and_nationwide.

[30] Heidi Heilbrunn, Video: *Greenville begins issuing marriage licenses to same-sex couples,* Greenville Online (Nov. 21, 2014), http://www.greenvilleonline.com/story/news/local/2014/11/20/chief-justice-john-roberts-issues-ruling-in-sc-marriage-case/19320767/.

Hessel have with Candace's family in Nebraska. Candace explained that before they married, "my family could not understand the nature of our relationship even though they knew Leigh. After we married, they understood it because they knew what being married meant. Marriage is a universally understood rite of passage. . . . This new understanding brought much greater acceptance."[31]

The court of appeals recognized that "[g]ay couples, no less than straight couples, are capable of sharing" relationships of "love, affection, and commitment" and "of raising children and providing stable families for them." Tanco, Pet. App. 33a. What the court of appeals missed is what the voices of LGBT families evince: Recognizing a constitutional right to marry is critical to the very sense of LGBT families being families, to their dignity and well-being, and to their ability to communicate that they are family.

A. Voices of parents

Like Michigan petitioners April DeBoer and Jayne Rowse and other petitioners who are parents, thousands of American families with children headed by LGBT couples need the respect, recognition and protection that marriage equality provides.

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[31] *One Couple's Story of Why We Need Marriage Equality in Nebraska and Nationwide, supra.*

Case in Point: Valerie and Stephanie LaBonte, Troy, Alabama

Valerie LaBonte and Stephanie Johnson of Troy, Alabama, fell in love four years ago and married in New York in 2013, because they could not do so in their home state of Alabama. Together, they are raising four children, two each from previous marriages.[32] However, Alabama's exclusionary marriage law prevented the couple and their children from being able to live together as a family. It even prevented the six-year-old twin boys that Stephanie brought to their family from knowing that Valerie and Stephanie were married and that they have two additional brothers.

Valerie's two children have a great relationship with Stephanie. "They've known Stephanie for over four years and they love her," Valerie said. "The only problem is on Mother's Day they have so much stuff to make!" However, Stephanie's joint custody arrangement contains a "paramour" clause that prohibits Stephanie or her former husband from having a "romantic interest to whom the party is not married stay[ ] overnight while the children are in their custody or control." Violation of the provision results in "forfeiture" of custody. The provision posed no problem for Stephanie's former husband because he could

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[32] *An Alabama LGBT Family Can Finally Live as a Family*, MEUSA News Blog, Marriage Equality USA (March 2, 2015), http://www.marriageequality.org/alabama_lgbt_family.

marry another woman, but Alabama marriage law prohibited recognition of Stephanie and Valerie's marriage. Stephanie and Valerie also feared that Stephanie might lose custody of her twin boys if they even revealed to the boys that they were married.[33]

Maintaining two households and paying two rents presented substantial financial hardships, but as Stephanie put it at the time, "the hardest part truly comes from my boys not knowing we are a family. . . ." Valerie recounts: "One time, I came over to Stephanie's house to pick up our vacuum cleaner, and one of her sons asked me 'What are you doing here?'" At first, Valerie was upset with him, but she says, "I reminded myself quickly that he did not understand who I was – that I was married to their mom and I was their stepmother." When Valerie helped the kids with their homework or helped discipline them, she explained "they did not respect me as a parent – they just wonder why their mom's friend is doing this. I want to tell them I'm doing things for them because I love them as one of their moms, but I can't and it really hurts." Stephanie added, "I struggle daily with teaching my boys to embrace the differences in others and to be honest, all while I am hiding who I truly am and who I love from them. . . . They are missing out on a huge part of my life."[34]

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[33] *Id.*

[34] *Id.*

Stephanie and Valerie are both well-respected at their jobs, pertaining to Internet technology staffing and recruiting, as well as in the community. Valerie is an Iraq War veteran, whose service included missions through Baghdad and Fallujah. Stephanie is the treasurer and fundraising chair for the Pike County Boys and Girls Club and also serves on their board of directors. The two are active churchgoers and designed their church's food ministry that donates "literally over a ton of food" to local families in need each month.[35] Yet Alabama's marriage laws did not just give Stephanie and Valerie's twin boys the message "that their marriage is less worthy than the marriages of others," *Windsor,* 133 S.Ct. at 2696, Stephanie and Valerie could not even tell the boys they were married. Alabama's marriage law did not just make it "more difficult for [their] children to understand the integrity and closeness of their own family," *Id.* at 2694, the boys did not even know they were a family.

Everything changed for Stephanie and Valerie's family when the federal district court held that the state of Alabama must recognize marriages of same-sex couples. On the first day possible, Stephanie and Valerie filed as a married couple to have Stephanie share Valerie's last name, LaBonte. The couple explained, "It's such a relief to finally feel like the law is on our side." Most importantly, they "feel more secure

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[35] *Id.*

knowing that the law recognizes us as a family and that Stephanie can't lose custody of her boys just because of our relationship."[36]

Stephanie and Valerie recently told the twin boys that they were married. Valerie reports that the twins "were happy to learn" the news and that "we are so happy and grateful that her boys finally know we are a family. . . . We'll finally be able to live under one roof together. We'll be able to do all the things that other families take for granted." Stephanie also met with her former husband for coffee, and he said that because of the court ruling he recognized that she and Valerie were now married and would not try to prevent them from making a home together. Stephanie and her former husband discussed raising their children and "how we would handle talking to the kids when the subject of my marriage to Valerie came up." Stephanie reports: "We agreed that we would tell them that he and I believed different things about who should be able to marry, but above all we agreed that we would never say anything negative about each other to our children."[37]

B. Voices of children of LGBT parents

"It's definitely the best that I think could ever happen. My parents are married, finally." So said the

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[36] *An Alabama LGBT Family Can Finally Live Together as a Family, supra.*

[37] *Id.*

12-year-old son of Bert Pezzarossi and Dan Hance of Miles City, Montana, who together are raising six adopted children, all of whom accompanied them on the 145 mile trek to Billings to participate in the wedding.[38]

Having their parents be able to marry is important to the children of same-sex couples, just as it is to their parents. When marriage equality came to Virginia last year, Carol Schall and Mary Townley learned that the state would finally respect their marriage that had been performed in another state. Their sixteen-year-old daughter cried tears of joy on the steps of the Richmond courthouse as her parents renewed their vows. She said, "I'm just really happy today that they're finally recognized as my mothers in all ways. . . ."[39] Her mother Mary concurred: "One of the most important things for us as a family is that our daughter . . . can hold her head up high and say, 'I have a family like your family. . . .'"[40]

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[38] Chris Cioffi, *Gay couples get marriage licenses: "We couldn't sleep last night, we were so excited,"* Billings Gazette (Nov. 20, 2014) http://billingsgazette.com/news/special-section/same-sex-marriage/gay-couples-get-marriage-licenses-we-couldn-t-sleep-last/article_6fb07aec-c3e1-52a5-9026-d593704dd5e1.html

[39] Michael K. Lavers, *'What a great day to be a Virginian,'* Washington Blade (Oct. 6, 2014) http://www.washingtonblade.com/2014/10/06/great-day-virginian/.

[40] Markus Schmidt, *Same-sex couples marry as the unions become legal in Va.*, Richmond Times-Dispatch (Oct. 6, 2014) http://www.richmond.com/news/virginia/government-politics/article_b69318d2-ad92-5e33-a276-8da57520ef04.html.

Peter Hams-Shepherd, now an adult, was raised in Massachusetts by his two mothers, Susan Shepherd and Marsha Hams. He describes the transformation that he and his family underwent when his parents were finally able to marry in 2004: "[A]s a kid, if your parents are different, . . . you don't want to talk about your family. . . ." Whenever he told someone that his parents were gay, "[N]o matter what they said, my next reaction was, 'Don't tell anybody.'" He continued:

> After my parents got their marriage license, all that changed. For the first time in my life I could stand there and I had a word to describe my family and that word could describe it to everybody because everybody already knew what a marriage was. . . .
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> It's been the biggest thing in my life. You know, I can't stop talking about my parents. When you say that your family is married, they just get it and there's not a question.[41]

III. Marriage Equality in Every State in the Union Is Essential to the Dignity and Security of LGBT Americans

Being able to marry and to have one's marriage recognized in every state in the Union is critical to

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[41] New Jersey Civil Union Review Commission, *The Legal, Medical, Economic & Social Consequences of New Jersey's Civil Union Law* (Dec. 10, 2008), at 22*f*., http://www.nj.gov/oag/dcr/downloads/CURC-Final-Report-.pdf.

the legal rights and protections of LGBT families and goes to the heart of LGBT people experiencing that they are being treated equally as Americans.

A. Marriage equality is essential in every American's home state

The day marriage equality came to Virginia, Carol Schall said, "For the first time legally in Virginia I can say that I'm here with my wife . . . and my daughter. . . . I don't think there's any more profound statement, yet any more simple statement than for me to say that." Her wife Mary Townley added, "It's just amazing that now we are married in Virginia."[42]

As the freedom to marry has come to many states across the country, same-sex couples everywhere have expressed how important it is to be able to marry in their home state. LuAnn Lewis of Topeka, Kansas, rushed to the Shawnee County Courthouse to pick up a marriage license the first day it was possible. LuAnn and her partner of seven years, Bridgett Wilson, had already held a commitment ceremony in their church, but Lu Ann said that "I couldn't get here quick enough" to pick up a marriage application.[43] Lu

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[42] John Woodrow Cox, Jenna Portnoy and Justin Jouvenal, *Same-sex couples begin to marry in Virginia*, Washington Post (Oct. 6, 2014), http://www.washingtonpost.com/local/virginia-politics/same-sex-marriages-in-virginia-can-begin-almost-immediately/2014/10/06/97ceab2e-4d69-11e4-aa5e-7153e466a02d_story.html.

[43] Jonathan Shorman and Ellen Fike, *Woman becomes first person to apply for same-sex marriage license in Shawnee County*, Topeka Capital-Journal (Nov. 13, 2014), http://m.cjonline.

(Continued on following page)

Ann further remarked: "I didn't think that I'd live long enough to see it happen in this state. I thought I'd really have to move."[44] Marriage gave the couple a sense of security: "It's comforting for the simple fact that if one of us gets hurt and is in the hospital, we know the other one can visit – we are family now," said Lewis. "I'm very proud now to say that I'm from Kansas," said LuAnn.[45]

When Angela and Kelli of Olathe, Kansas, married, they echoed Lu Ann's words: Kansas "is our home state. This is where we live. This is where we pay our taxes. This is where we raise our children. . . . We are excited that other families will be recognized as regular families [in Kansas] now."[46]

However, same-sex couples who are banned from marrying or whose marriages are not recognized where they live continue to experience exclusion and vulnerability. Kentucky petitioners Greg Bourke and Michael DeLeon, who have been together for over 30

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com/news/2014-11-13/woman-becomes-first-person-apply-same-sex-marriage-license-shawnee-county#gsc.tab=0

[44] *Id.* and Video.

[45] Bruce Harrison, *VIDEO: Same-sex Couple Married in Topeka Church Ceremony*, WIBW News Now (Nov. 17, 2014), http://www.wibwnewsnow.com/sex-couple-married-topeka-church-ceremony/.

[46] Brad Cooper, *Constitutional challenge brought against Kansas gay marriage ban*, Kansas City Star (Oct. 11, 2014), http://www.kansascity.com/news/local/article2650802.html.

years and are raising two children, married in Canada in 2004. Obergefell, Tanco, Bourke J.A. 585-86. Eleven years later, their marriage is still not recognized in their home state of Kentucky. In Greg's words, "There's no reason why we should be second-class citizens. We should be at the table with everybody else."[47]

Indeed, no couple should be forced to leave their home state to marry. Some same-sex couples may lack the financial resources or time off work to travel potentially long distances to a state that will marry them. And, like heterosexual couples, same-sex couples should be able to marry in the community where they live, surrounded by their friends and family.

The experiences of Ohio petitioner James Obergefell and his now deceased spouse John Arthur starkly demonstrate these points. Together for 20 years, James and John made their home in Cincinnati, Ohio, where they "developed many close friends," had many close family members, and were very active in the community. J.A. 23-24. Tragically, John developed the incurable disease, amyotrophic lateral sclerosis, in 2011. Weak and in hospice care, John was nearing death in July 2013, when he and

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[47] Jessie Halladay, *Couple challenges Kentucky law against gay marriage*, USA Today (July 26, 2013), http://www.usatoday.com/story/news/nation/2013/07/26/same-sex-marriage-kentucky/2589379/.

James decided they wanted to marry because in John's words, "I love [James] and want our last days to be a celebration of our love." J.A. 28-29.

John and James confronted a daunting obstacle, however: neither Ohio nor any of the state bordering Ohio permitted same-sex couples to marry. But through the generosity of their close friends and family members, they were able to charter a flight to Baltimore Washington International Airport in Maryland, marry on the tarmac, and fly home to Cincinnati. J.A. 25.

Although they wed under such circumstances – alone, except for an officiant and witness, instead of surrounded by their close friends and family members – John rejoiced: "I'm overjoyed. I'm very proud to be an American. . . . And I feel like the luckiest guy in the world." John died three months later.[48]

However, because in Ohio their marriage "means nothing," James continues to struggle to be identified as John's spouse on his death certificate. J.A. 25. Being recognized in Ohio would mean that in the aftermath of John's death, James as a legal spouse would not be treated differently regarding taxes and other financial matters because he is gay. Moreover, James explains that he and John "want the world to

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[48] Glenn Hartong and Carrie Cochran, Article and Video: *John Arthur, Terminally Ill Ohio Man Who Challenged Gay Marriage Ban, Dies,* Cincinnati.com (Oct. 22, 2013), http://www.cincinnati.com/article/20131022/NEWS0104/310220031/.

know that we share the highest commitment that two people can make to each other in our society. . . . It breaks my heart to think" that the "last official record" of John's life "would omit the most important fact of his life – our marriage." J.A. 26.

B. Marriage equality is essential to LGBT Americans' ability to move or travel to any state in the Union

Like Tennessee petitioners Dr. Valeria Tanco and Dr. Sophy Jesty, many LGBT couples move from one state to another for various reasons, just as millions of other Americans do. But unlike other Americans, when LGBT couples move they risk losing critical rights and protections. Traveling to be with family for the holidays or to take a vacation out of state can put same-sex couples and their families at risk. Indeed LGBT couples' losing critical rights and protections and sacrificing part of who they are when they cross state lines deprives these couples of part of their identity as members of the national community to which all Americans should be entitled.

Case in Point – Leigh Hessel and Candace Krueger, Tri Cities, Nebraska

Leigh Hessel and Candace Krueger, who described their experience of marrying in San Francisco in 2004 in Section I, C, *supra*, married again in 2008 in their home state of California. Leigh and Candace described their 2008 wedding as "extremely powerful

because once again we were making profound life vows to each other and binding ourselves together legally."[49]

Leigh and Candace's vows and marriage would soon be tested. America's economic crash that began around the time they married was devastating to the couple. Leigh explains that "[t]he recession killed my career as an electrician. I couldn't find work. . . . Soon we began having trouble paying our bills, including our rent. We had two weeks to vacate our apartment, and we faced homelessness."[50]

Fortunately, Candace's family in the Tri Cities area of Nebraska, who came to embrace Leigh and Candace after their 2004 marriage, invited the couple to live with them while they reestablished themselves. Leigh recalls how they jammed what they could into their two cars and small trailers and moved to Nebraska. "We lost not only any furniture and possessions that wouldn't fit in our cars; we lost being close to our dear friends and our community in California. I had lived in California for over 30 years."[51]

Perhaps most importantly, the couple felt as if they had lost their marriage. In Candace's words, "It was devastating. We grieved. Being married means so

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[49] *One Couple's Story of Why We Need Marriage Equality in Nebraska and Nationwide, supra.*

[50] *Id.*

[51] *Id.*

much to us, and we worked really hard to help bring marriage equality to California." The couple "tell[s] everyone [they] can that [they] are married in California so that they know same-sex couples are part of their lives and their communities." But as Candace says, "it's no longer really true because Nebraska law doesn't recognize us as married. . . . [In Nebraska], we can't even get a domestic partnership, civil union, or anything that would give us limited rights as a couple. . . . It's scary."[52]

Candace was hospitalized soon after the couple moved to Nebraska, and not knowing whether Leigh would have access to her in the hospital, "intensified the stress [they] were already feeling." When they file their income taxes, they fill out joint forms for their federal taxes but must complete forms as single people for their state taxes. As Candace put it: "The process is complicated and confusing – and it is humiliating and angering. We have to declare falsely that we are not married when we are both in our hearts and under the laws of California, many other states, and the federal government."[53]

Leigh and Candace both have jobs now and are able to live on their own again. "Honestly, all the upheaval in our lives over the last few years has put a lot of stress on our relationship," says Candace. Even though Nebraska refuses to recognize Leigh and

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[52] *Id.*

[53] *Id.*

Candace as married, the fact that they exchanged legally binding vows that are recognized in many jurisdictions has helped them overcome these obstacles. As Candace explains, "Difficulties we have do not seem as bad because we are unified by that piece of paper. We work harder and deeper to resolve problems because we are legally bound." She says, "We love each other deeply, and we remain dedicated to the very real commitments we made to each other when we married: 'For better and for worse, for richer and poorer, in sickness and in health.' Our wedding vows have sustained us."[54]

When the district court in Nebraska recently ruled in favor of marriage equality, Leigh and Candace were "ecstatic" that they might finally be legal in Nebraska," but the Eighth Circuit's subsequent stay of the ruling means they remain in limbo. They look to this Court to recognize marriage equality nationwide.[55]

Case in Point: Suzi and Dani Williams, Oregon

The story of Dani Williams, a transgender woman, and her wife Suzi also reveal the importance of nationwide marriage equality.

Dani, who was then living as a man, met his wife Suzi in 1972 while they were undergraduates at the University of California at Davis. They got married soon after graduating and have now been married 41

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[54] *Id.*

[55] *Id.*

years. After they married, Suzi began her career as an employee of the State of California, and Dani became a lawyer. The couple raised two sons in Sacramento. In 2002, after being together for 30 years, Dani revealed a deep secret that she had long been repressing and was eating away at her: despite presenting as a man, she had known since she was 13-years-old that she was female. Dani recounts: "I faced a personal life or death crisis: To live with the truth or to die with the lie. I chose to live."[56]

Suzi supported Dani fully: "As soon as Dani . . . shared her secret with me, I was completely fine with it. I love Dani, the person, and do not care what gender Dani presents to the world. My only concern at the time was Dani's safety. I was afraid of the coming ridicule." Suzi and Dani's children and their spouses support them as well. "We cherish the love of our sons and daughters-in-law and are grateful for their love and acceptance of us as a lesbian couple. We have also been blessed with two wonderful grandchildren."[57]

Like many couples their age, Suzi and Dani decided they wanted to relocate for retirement near one of their children so they could participate in the upbringing of a grandchild and to be close to family

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[56] *An LGBT Couple, Legally Married for 41 Years, Explains Why Marriage Equality Is Important to Them*, MEUSA News Blog, Marriage Equality USA (March 5, 2015), http://www.marriageequality.org/lgbt_couple_married41years.

[57] *Id.*

as they aged. However, remaining legally married when they moved was essential to them not just for the financial security they had built in vested health, pension, and social security benefits that were secured for them as an LGBT couple in California, but for their dignity as well. In Suzi and Dani's words: "Sustaining our status of being legally married is vital to us. . . . Being married is a statement of our lifetime bond of love, which we cemented when we exchanged vows together and married forty one years ago."[58]

Suzi and Dani were very relieved to learn that Oregon – where one of their sons and his family had recently settled – now recognizes marriages regardless of the gender of the spouses and also has many protections for transgender people, and they moved to Oregon. "Living in Oregon where same-sex marriage is legal, is a huge blessing," but "[a]s Americans, we should have the freedom to be able to follow either of our son's families" wherever they go "without worrying about our losing our rights, protections, and security that the two of us have built together as a married couple."[59]

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[58] *Id.*

[59] *Id.*

IV. Marriage Equality Must Be a Federal Constitutional Right, and Heightened Scrutiny Under Equal Protection and Due Process Should Apply Here

Wendy Jones, who married her partner of 17 years, Lauren Kramer, in front of City Hall in Orlando, Florida, put it simply: "[I]t's about being American. It's about the Constitution."[60] This Court should apply heightened scrutiny under both the Equal Protection and Due Process Clauses of the Fourteenth Amendment to hold that the laws excluding same-sex couples from marriage violate the Constitution.

A. Marriage equality must be a federal constitutional right

Without federal constitutional protections, LGBT Americans as a small minority of the United States population face the real possibility that attaining the freedom to marry through political processes may be decades away in some states and could be reversed in others that have already established it, as happened in California and in Maine. LGBT Americans should not have to prove their right to marry to legislators or to millions of voters they do not even know or fear losing their freedom to marry if the political climate changes.

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[60] Stutzman, Mark Schlueb and Melanie Dostis, *supra*.

Without a definitive constitutional ruling in favor of nationwide marriage equality, continual uncertainty will also hang over LGBT Americans in states that have equality now only by virtue of lower federal court rulings. For instance, Valerie and Stephanie LaBonte, who finally began to feel a degree of protection for their family when the federal district court in Alabama invalidated their state's ban on marriage for same-sex couples, face renewed uncertainty in light of the recent Alabama Supreme Court decision upholding the state's ban and ordering state probate judges to enforce it.[61] Valerie explains how "frustrated [they feel] at the amount of confusion" going on in their state and that they no longer "feel the same security" they had just begun to enjoy. "It was very short-lived," she says. "Just once we would like to wake up and not feel like the very foundation of our family, that we've now been permitted to build, could crumble at any moment."[62]

B. Heightened scrutiny under equal protection and due process should apply here

The vulnerability that Valerie and Stephanie and many LGBT couples across the country experience on

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[61] See *Ex Parte State of Alabama ex rel. Alabama Policy Institute, et al.*, No. 1140460 (Ala. Mar. 3, 2015) (per curiam), available at http://judicial.alabama.gov/docs/sc/SC_RL_030315.pdf.

[62] *An Alabama LGBT Family Can Finally Live Together as a Family, supra.*

an ongoing basis underscores the importance of this Court's holding that laws that exclude same-sex couples from marriage not only violate LGBT American's fundamental right to marry under due process, but that governmental actions, such as these, that target LGBT Americans for differential treatment are subject to heightened scrutiny under equal protection.

Like Valerie and Stephanie, many LGBT Americans, even those living in states with lower federal court rulings mandating marriage equality, face continual uncertainty and threats to their legal status and security as some state officials take or propose measures that betray enduring animus or impose differential treatment. For instance, a month after Ruby and Ashlee Henderson married in Tippecanoe County, Indiana, Ruby gave birth to their son. But county officials refused to identify Ashlee as the boy's second parent on his birth certificate, something the county would have done if they were a heterosexual married couple. "Not without a court order, they told us, even though we were legally married," Ashlee said.[63] As issued, the birth certificate does not even acknowledge the Hendersons' marriage and reads as if the child had been born out of wedlock to Ruby alone.

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[63] Dave Bangert, *Same-sex moms demand names on son's birth record,* Lafayette Journal & Courier (Feb. 13, 2013), http://www.jconline.com/story/opinion/columnists/dave-bangert/2015/02/12/sex-moms-demand-names-sons-birth-record/23322993/

Further, as discussed throughout this brief, many LGBT couples marry to receive public recognition as a family and to partake of legal benefits and protections, requiring them to identify themselves as LGBT. Without heightened scrutiny, LGBT people in a given state may technically possess the right to marry, but fear marrying because doing so and publicly identifying as LGBT could have serious, negative legal repercussions for them in other parts of their lives.

For example, same-sex couples began marrying in Kansas on November 12, 2014 by virtue of lower federal court rulings. But three months later, Kansas Governor Sam Brownback rescinded an eight-year-old State Executive Order prohibiting discrimination against LGBT state employees.[64] Fear immediately spread among those employees. Not surprisingly, Equality Kansas, an LGBT advocacy group, received numerous press requests for LGBT state employees to interview. They declined them, explaining: "They talk today, they're fired tomorrow."[65]

LGBT state employees who want to marry now risk losing their jobs if they marry. Those who have married are already vulnerable. Stephanie Mott, a Commissioner on the City of Topeka Human

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[64] Kansas Executive Order No. 15-01 (Feb. 10, 2015) (rescinding, inter alia, Executive Order No. 07-24 issued Aug. 31, 2007), available at http://kslib.info/DocumentCenter/View/4171.

[65] Equality Kansas, Twitter (Feb. 11, 2015), https://twitter.com/KansasEquality/status/565584883440168960.

Relations Commission, knows many LGBT people who work for the state government. She explains that LGBT state workers "were already very cautious about public attention. . . . These workers' concerns are multiplied exponentially now. These are people who stand to lose more than just their jobs. They stand to lose their homes and their savings if they lose their jobs."[66]

LGBT state employees in Kansas have effectively lost their recently gained freedom to marry and now "have their lives burdened, by reason of government decree, in visible and public ways." *Windsor*, 133 S.Ct. at 2694.[67] The defense of the governor's actions that State Representative John Rubin of Shawnee, Kansas, a former federal judge, offered underscores the importance of heightened scrutiny under equal protection. Representative Rubin explained: "Until sexual orientation is either added in Kansas as a

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[66] *LGBT Kansans and Allies Stand Up Amidst Uncertainty and Fear,* MEUSA News Blog, Marriage Equality USA (March 5, 2015), http://www.marriageequality.org/lgbt_kansans_standup.

[67] Other proposed or enacted state measures single out LGBT people for differential treatment, and include bills pending in Texas and South Carolina that would prohibit government employees from issuing marriage licenses to same-sex couples and still receive their salaries (see http://www.capitol.state.tx.us/tlodocs/84R/billtext/pdf/HB00623I.pdf (Texas); http://www.scstatehouse.gov/sess121_2015-2016/bills/3022.htm (South Carolina)), and recently enacted legislation in Arkansas, revoking and prohibiting local ordinances that protect LGBT rights where no state law does the same. See Ark. Code § 14-1-403.

protected class under our law or added federally, which it isn't now . . . I think [the issue of legal protections for LGBT state workers is] the Legislature's prerogative."[68]

The dignity that the freedom to marry instills in LGBT Americans is not just the pride of getting married but the dignity that their government is finally treating them as equal human beings as lesbian, gay, bisexual, and transgender Americans, something many of them have never experienced before. That dignity is incomplete unless LGBT people receive the same measure of respect in every way in which they interact with the government. Given this nation's history of discrimination against LBGT Americans and its persistence, lack of heightened scrutiny for laws that treat LGBT people differently from everyone else contributes to LGBT Americans' sense that their rights are transient and less worthy of protection.

A holding by this Court that governmental actions that target LGBT Americans for differential treatment are subject to heightened scrutiny would make clear to all government officials that such actions are presumptively invalid. This Court should apply heightened scrutiny here to hold that state

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[68] Bryan Lowry, *Gov. Sam Brownback rescinds protected-class status for LGBT state workers in Kansas*, Kansas City Star (Feb. 11, 2015), http://www.kansascity.com/news/government-politics/article9694028.html.

laws that exclude same-sex couples from marriage are unconstitutional.

V. Our Common Humanity as Americans Lies at the Core of Marriage Equality and the Liberty and Equality Guarantees of the Fourteenth Amendment

When Jim Browne and Ken Wright married in Florida after 41 years together, Ken said, "We're all one, we're all humans, and we're just trying to share our love."[69] When Juan Rodriguez married his partner of 36 years, Nelson, in New York, he put it this way: "There is love, and love doesn't have sex, or color or anything."[70] Doug Flanders, who married his partner of ten years, Carmine Caruso, in Boise, Idaho, said: "I see it as equal rights. . . . Somebody being able to walk in . . . , no matter who you are, and get a marriage license. . . ."[71]

Our common humanity as Americans lies at the core of the Fourteenth Amendment's guarantees of liberty and equality. "In our society, a variety of

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[69] Stutzman, Mark Schlueb and Melanie Dostis, *supra*.

[70] Bryan Llenas, *Behind Every Marriage Certificate – A Love Story: Slide 6: Finally . . . After 36 Years*, Fox News Latino (July 24, 2011), http://latino.foxnews.com/slideshow/latino/news/2011/07/24/new-york-citys-gay-latinos-get-hitched/#slide=6.

[71] Nicole Pasulka, *Meet the Inspiring Gay Couple Who Just Got Married In Idaho*, Yahoo! News (Oct. 15, 2014), http://news.yahoo.com/meet-inspiring-gay-couple-just-got-married-idaho-231651007.html.

citizens of different backgrounds coexist because we have constitutionally bound ourselves to protect the fundamental rights of one another from being violated by unlawful treatment." *Perry v. Schwarzenegger*, 790 F.Supp.2d 1119, 1126 (2011) (Order Denying Defendant-Intervenors' Motion to Vacate Judgment).[72]

Americans' right to marry and to have their government accord them the highest respect and recognition for their relationship should derive inherently from their humanity and not the particularities of their gender.

Case in Point: Nick and Jessica Fulgham, Desoto County, Mississippi

Jessica Fulgham grew up in what she describes as a typical Southern manner that "is totally different than growing up anywhere else. . . . [W]e are taught to say 'yes ma'am' or 'no ma'am' and 'yes sir' or 'no sir,' very early on in life. You also learn that family and God are number one, to always stand up for what you believe in." From the time Jessica was a young girl, she dreamed of meeting her "other half" and of the day that they would marry. "I imagined I would always have my daddy and mama both there by my side, my daddy would give me away and my mama would be in tears, to see that day when her baby found that one person to spend their lives together

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[72] *Aff'd*, 671 F.3d 1052 (9th Cir. 2012), *vacated and remanded for lack of standing*, 133 S.Ct. 2652 (2013).

until the end." She "thought it would be the happiest day ever." Although life has sometime been difficult for Jessica and both her parents have died, Jessica said, "I never lost the hope of finding my other half."[73]

In 2013, she found her other half: Nick, who happens to a transgender man. Jessica says that soon after they met, "I fell deeply head-over-heels in love with Nick Fulgham. I learned quickly that Nick was my one person in life." Jessica describes the night that Nick proposed to her as "like a night out of a movie; he went through so much trouble and so much planning to make it perfect. . . ."[74]

Nick and Jessica married in a simple ceremony before the Justice of the Peace in Canton, Mississippi, with two of their children present. Jessica then posted the good news to her friends and family on her Facebook page. But as Jessica explains: "Instead of getting greeted with, 'Congratulations. I'm so happy for y'all. Best wishes,' like a normal couple would," news of their marriage spread through social media and they received a barrage of attacks because Nick is transgender.[75] Because their home state bans same-sex couples from marriage, radio shows, national

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[73] Jessica Fulgham, *I Did Not Commit Biological Fraud*, Daily Kos (Oct. 15, 2014), http://www.dailykos.com/story/2014/10/15/1336774/-I-Did-Not-Commit-Biological-Fraud?showAll=yes.

[74] *Id.*

[75] Anna Wolfe, *A Legal Marriage Under Attack*, Jackson Free Press (Oct. 8, 2014), http://www.jacksonfreepress.com/news/2014/oct/08/legal-marriage-under-attack/.

news stories, and blogs accused Nick and Jessica of illegally obtaining a "counterfeit" marriage and committing "biological fraud."[76]

Despite Nick having taken all necessary steps under state law to change his gender legally, Jessica reports that she and Nick now "stress worrying about upcoming court battles that may happen because of this. . . ." They also received death threats. In Jessica's words: "I thought, like most people, when you get married it would be the best thing ever. You would be so happy. I did not ever realize that on top of regular everyday stress you would have stress worrying about discrimination, stress worrying about your safety and your family's safety. . . ."[77]

Jessica explains: "I didn't fall in love with Nick because he was a man. It wouldn't have mattered what gender Nick was. I fell in love with Nick because he was Nick. . . ."[78] "[O]ur marriage is built of love for each other. The love everybody dreams of finding in their lifetime and I was lucky enough to

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[76] Bryan Fischer, *The continuing saga of the lesbians who got 'married' in Mississippi*, One News Now (Oct. 6, 2014), http://www.onenewsnow.com/perspectives/bryan-fischer/2014/10/06/the-continuing-saga-of-the-lesbians-who-got-married-in-mississippi#.VNU-GC6mEZw.

[77] Wolff, *supra*.

[78] *Id.*

have found this love. . . ."[79] "[W]e all are humans at the end of the day. . . ."[80]

CONCLUSION

For all the foregoing reasons, this Court should reverse the judgment of the court of appeals and hold that that state laws that exclude lesbian, gay, bisexual, and transgender people from marriage violate the liberty and equality guarantees of the Fourteenth Amendment to the United States Constitution.

Respectfully submitted,

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[79] Jeff White, *Legally Married Mississippi Couple Faces AFA Backlash*, Daily Kos (Sep. 26, 2014), http://www.dailykos.com/story/2014/09/26/1332647/-Legally-Married-Mississippi-Couple-Faces-AFA-Backlash.

[80] Fulgham, *supra*.